IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 640 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
HON'BLE MR. JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

RAVAL MANIBEN MELABHAI & 1 - Opponent(s)

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Appearance :
MR. SUDHANSHU PATEL, ASST.PUBLIC PROSECUTOR for Petitioner No(s).: 1.
MR PINAKIN B RAVAL for Respondent No(s).: 1,2.
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CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR. JUSTICE MD SHAH

Date : 19/07/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

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1. In this appeal, the State of Gujarat has challenged

the validity of the judgment and order dated 5th October, 2002 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 28 of 2002. By virtue of the impugned judgment, the accused have been acquitted of the charges levelled against they under the provisions of Sections 302, 342 and 34 of the Indian Penal Code.

2. We have heard ld. Assistant Public Prosecutor Mr. Sudhanshu Patel and ld. Advocate Mr. Pinakin B. Raval appearing for the accused and have also perused records and proceedings which have been called for from the Trial Court.

3. Upon hearing the ld. Advocates and upon going through the records and proceedings, in our opinion, the Trial Court has not committed any error in acquitting the accused.

4. The dying declaration on which the prosecution wanted to rely upon, has not been rightly relied upon by the Trial Court for the reason that there was some interpolation in the dying declaration. We have also seen the dying declaration and in our opinion, the findings of the Trial Court with regard to

interpolation is correct.

5. It is also pertinent to note that the husband of the deceased has deposed that upon knowing the fact that his wife was on fire, he had broken the roof and through the roof, he had entered the room. He has deposed that the room, where the deceased was on fire, had been locked from inside. Upon perusal of the panchnama of the room, it is clear that the roof had been broken, so we believe that the husband of the deceased must have entered in the room through the roof which he had broken. There is sufficient indication to show that the burning had taken place in the room. Had the room not been locked from inside, it would not have necessary for the husband of the deceased to enter the room after breaking the roof and there is not reason to disbelieve the husband of the deceased.

6. We also find that there are certain contradictions with regard to the name given by the deceased of the accused. The said discrepancies create a doubt in the case which has been stated by the prosecution.

7. Looking to the aforesaid important factors, the

Trial Court came to the conclusion that possibly, it was a case of suicide and not murder and in our opinion, the findings of the Trial Court cannot be doubted looking to the evidence adduced before the Trial Court.

8. We see no reason to come to a different conclusion than the one which has been arrived at by the Trial Court. We, therefore, dismiss the appeal. Records and proceedings to be returned to the Trial Court.

[A.R. DAVE, J.]

[M.D. SHAH, J.]

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